



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

CLEM C MARTIN DC

**Respondent Name**

PROTECTIVE INSURANCE CO

**MFDR Tracking Number**

M4-08-3870-01

Previously: M4-07-6324-01

**Carrier's Austin Representative**

Box Number 17

**MFDR Date Received**

May 25, 2007

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "CPT Service Code 92531 and 92532-Bundling dispute withdrawal. Requestor withdraws Appeal for Medical Review Division (MRD) adjudication of CPT service codes 92531 and 92532 – Nystagmic testing. CMS (Medicare) Fee Guidelines designate these CPT Codes a Relative Value Unit [sic] (RVU) score of '0' with 'status Code 'B' indicating these services are bundled into other services. Request for MRD adjudication of carrier incorrect bundling Evaluation and Management codes 99213 and 99214 with Current Procedure Therapy code 98940-3 spinal manipulation remains before the division ... The E/M services 99212-5 may be prompted or caused by the same symptoms or conditions for which CPT service is delivered. Different diagnoses are not required for reporting CPT 98940-3 and E/M services on the same date. Separate E/M service on same date of CPT is identified by Modifier -25."

**Amount in Dispute:** \$4,366.09

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "...all office visits CPT codes, i.e. 99213, 99212, have been denied as they are included in the CPT code 98940, spinal manipulation. Per the AMA CPT book for 2006, it states that additional evaluation and management services may be reported separately using modifier 25, if the patient's condition requires a significant separately identifiable E/M service, above and beyond the usual pre-service and post-service work associated with the procedure. The Requestor has not satisfied this requirement as their documentation does not support the additional E/M service, and therefore, reimbursement is not allowed.

For the CPT codes 92531 and 92532 billed on the majority of the dates of service at issue in this matter, these charges are not paid separately to chiropractors per the fee schedule. Therefore, reimbursement is not allowed.

For the CPT code 99213-25 for the date of service 10/23/06, listed on the Table of Disputed Services, the Requestor did not bill this code on any HCFA-1500. Therefore, no reimbursement is owed.

For the CPT code 95851 [sic] billed, there is no additional report of this manual muscle testing as required by the AMA CPT book for 2006. Therefore, no additional reimbursement is owed.

For the CPT code 95851 billed, there is no additional report of this range of motion measurements as required by the AMA CPT book for 2006. Therefore, no additional reimbursement is owed."

For CPT code 99212-25 for date of service 10/30/06, listed in the Table of Disputed Services, payment has been made. Please see the attached EOB and copy of payment. The same applies to the CPT code 94760 for the date of service 1/24/07."

**Response Submitted by:** Downs Stanford, P.C.

**SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 5, 2006 through January 24, 2007	92531 and 92532	\$1,156.00	\$0.00
June 12, 2006 through January 24, 2007	99212-25, 99213-25, 99214-25	\$2,490.15	\$0.00
July 25, 2006	98940	\$31.28	\$31.28
July 12, 2006, August 11, 2006, August 25, 2006 September 15, 2006 and November 20, 2006	95851	\$180.00	\$0.00
October 18, 2006	L0317	\$399.95	\$0.00
December 18, 2006	99354	\$106.00	\$106.00
January 24, 2007	94760	\$2.71	\$2.71
TOTAL		\$4,366.09	\$139.99

**FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.202 sets out the medical fee guidelines for professional services provided between August 1, 2003 and March 1, 2008.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 25 – Separate E&M service, same physician
  - B15 – Procedure/service is not paid separately
  - W1 – Workers' compensation state fee schedule adjustment
  - R38 – Included in another billed procedure
  - B5 – Payment adj/program guidelines not met or exceeded
  - RA2 – Procedure code billing restricted/once per day
  - 22 – Usual procedural services
  - R81 – CCI; HCPC/CPT Coding Manual Instructions/Guidelines
  - 97 – Charge included in another charge or service
  - 940 – Re-evaluation; no additional payment recommended
  - W4 – No additional payment allowed after review
  - 125 – Denial /reduction due to submission/billing error
  - R25 – Procedure billing restricted/see state regulations

**Issues**

1. Did the requestor withdraw CPT codes 92531 and 92532 from the Medical Fee Dispute Resolution (MFDR) review?
2. Did the requestor submit copies of initial and reconsideration EOBs with the MFDR request?
3. Did the requestor bill in conflict with the NCCI edits?
4. Is the requestor entitled to reimbursement?

## Findings

1. Review of the requestor's supplemental position summary dated July 13, 2009 states "CPT Service Code 92531 and 92532-Bundling dispute withdrawal. Requestor withdraws Appeal for Medical Review Division (MRD) adjudication of CPT service codes 92531 and 92532 – Nystagmic testing. CMS (Medicare) Fee Guidelines designate these CPT Codes a Relative Value Unite [sic] (RVU) score of '0' with 'status Code 'B' indicating these services are bundled into other services." As a result, the Medical Fee Dispute Resolution section will not consider the review of CPT codes 92531 and 92532 in this audit.
2. Former 28 Texas Labor Code §133.307 "(e) Request (General). All provider and carrier requests for medical dispute resolution shall be made in the form, format, and manner prescribed by the commission. (Requests for medical dispute resolution on medical fee disputes involving an employee's request for reimbursement of medical expenses are governed by subsection (f) of this section). (2) Each copy of the request shall be legible, include only a single copy of each document, and shall include: (B) a copy of each explanation of benefits (EOB) or response to the refund request relevant to the fee dispute or, if no EOB was received, convincing evidence of carrier receipt of the provider request for an EOB."

Review of the requestors and respondents DWC060 request/response does not contain copies of explanation of benefits for disputed dates of service August 1, 2006, August 8, 2006, August 9, 2006, August 11, 2006, August 14, 2006, August 18, 2006, August 21, 2006, August 25, 2006 and August 30, 2006.

Review of the insurance carrier's DWC060 response identifies the denial reasons on the Table of Disputed Services as follows:

- B15 – Procedure/service is not paid separately
- R38 – Included in another billed procedure

As a result, the disputed charges rendered between August 1, 2006 and August 30, 2006 will be reviewed based on the denial reasons indicated above.

3. 28 Texas Labor Code §134.202 "(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section."
  - Date of service, October 18, 2006: The requestor seeks reimbursement for HCPCS Level II code L0317, defined by the AMA CPT Code book as "Iiso, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel." The HCPCS Level II code was deleted by the AMA CPT Code Book on January 1, 2003, the date of service in dispute is October 18, 2006. A cross reference HCPCS Level II code was not identified. Per 28 Texas Labor Code §134.202(b) the system participants shall apply the Medicare program's coding policies in affect on the date of service. The requestor is therefore not entitled to reimbursement for CPT code L0317.
  - The requestor seeks reimbursement for evaluation and management codes; 99212, 99213 and 99214, appended with modifier -25. The AMA CPT Code Book defines modifier -25 as "Significant, Separately Identifiable Evaluation and Management Service by the Same Physician or Other Qualified Health Care Professional on the Same Day of the Procedure or Other Service."

The CMS MLN Matters Number: MM5025 article, dated May 19, 2006 sets out the policies for appending the modifier -25.

Review of the submitted documentation supports that the requestor billed an E&M code (99212, 99213 and 99214) on the same day as CPT code 98940. The division completed NCCI to identify potential edit conflicts that would affect reimbursement. The following was identified.

Per CCI Guidelines, Procedure Code 99212, 99213 and 99214 have a CCI conflict with Procedure Code 98940. Review documentation to determine if a modifier is appropriate.

Review of the submitted documentation does not support the application of modifier -25. As a result, the requestor is not entitled to reimbursement for CPT codes 99212, 99213 and 99214 rendered June 12, 2006 through January 24, 2007.
  - The requestor seeks reimbursement for CPT code 98940 rendered on July 25, 2006. The requestor billed CPT codes 99213, 94760, 92531, 92532, 98940. No NCCI edit conflicts were identified, for CPT code 98940, therefore the disputed CPT code 98940 will be considered for payment pursuant to 28 Texas Administrative Code §134.202 (c).
  - The requestor seeks reimbursement for CPT code 95851 rendered on July 12, 2006. The requestor billed CPT codes 95851, 99213-25, 97012 and 98940. Per CCI Guidelines, Procedure Code 95851 has a CCI Conflict with Procedure Code 98940. A modifier is not allowed. Therefore, reimbursement for CPT code 95851 cannot be recommended.

- The requestor seeks reimbursement for CPT code 95851 rendered on August 11, 2006, August 25, 2006. The requestor billed CPT codes 95851, 99213-25, 94760, 92531, 92532 and 98940. Per CCI Guidelines, Procedure Code 95851 has a CCI Conflict with Procedure Code 98940. A modifier is not allowed. Therefore, reimbursement for CPT code 95851 cannot be recommended.
  - The requestor seeks reimbursement for CPT code 95851 rendered on September 15, 2006. The requestor billed CPT codes 95851, 99213-25, 92532, 92531 and 98940. Per CCI Guidelines, Procedure Code 95851 has a CCI Conflict with Procedure Code 98940. A modifier is not allowed. Therefore, reimbursement for CPT code 95851 cannot be recommended.
  - The requestor seeks reimbursement for CPT code 95851 rendered on November 20, 2006. The requestor billed CPT codes 95851-22, 99212-25, 94760 and 98940. Per CCI Guidelines, Procedure Code 95851 has a CCI Conflict with Procedure Code 99212. A modifier is not allowed. Therefore, reimbursement for CPT code 94851 cannot be recommended.
  - The requestor seeks reimbursement for CPT code 99354-25 rendered on December 18, 2006. The requestor billed CPT codes 99212-25, 99354-25, 94760, 92531, 92532, 98940. No NCCI edits conflicts were identified, therefore the disputed CPT code 99354 will be considered for payment pursuant to 28 Texas Administrative Code §134.202 (c).
  - The requestor seeks reimbursement for CPT code 94760 rendered on January 24, 2007. The requestor billed the CPT codes 99213, 94760, 92531, 92532 and 98940. No NCCI edits conflicts were identified, therefore the disputed CPT code 94760 will be considered for payment pursuant to 28 Texas Administrative Code §134.202 (c).
4. 28 Texas Administrative Code §134.202 “(c) To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: (1) for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers' compensation system is the effective conversion factor adopted by CMS multiplied by 125%. For Anesthesiology services, the same conversion factor shall be used.”
- The requestor seeks reimbursement for CPT code 98940 rendered on July 25, 2006. No NCCI edit conflicts were identified.  
The MAR reimbursement for CPT code 98940 is \$31.28, therefore this amount is recommended.
  - The requestor seeks reimbursement for CPT code 99354 rendered on December 18, 2006. No NCCI edit conflicts were identified.  
The MAR reimbursement for CPT code 99354 is \$119.71. The requestor seeks \$106.00, therefore, this amount is recommended.
  - The requestor seeks reimbursement for CPT code 94760 rendered on January 24, 2007. No NCCI edit conflicts were identified.  
The MAR reimbursement for CPT code 94760 is \$3.11. The requestor seeks \$2.71, therefore this amount is recommended.

Review of the submitted documentation finds that the requestor is entitled to an additional reimbursement in the amount of \$139.99.

**Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$139.99.

***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$139.99 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

**Authorized Signature**

Signature	Medical Fee Dispute Resolution Officer	April 11, 2014 Date
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***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**